

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL KUZMA

1893 Clinton Street
Buffalo, NY 14206,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE

950 Pennsylvania Avenue, N. W.
Washington, DC 20530,

Defendant.

Complaint

1. This is an action under the Freedom of Information Act (hereinafter FOIA), 5 USC §552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records pertaining to Ray Robinson improperly withheld from Plaintiff by Defendant Department of Justice (hereinafter DOJ) and its component, Federal Bureau of Investigation (hereinafter FBI).

Ray Robinson was a black civil rights worker and follower of Dr. Martin Luther King, Jr., who travelled to South Dakota in April, 1973 to join members and supporters of the American Indian Movement, who were participating in the occupation of Wounded Knee, a Pine Ridge Reservation village. Ray Robinson never returned home to his family, his body has not been found, he has been declared legally dead and little is known about what actually happened to him.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 USC §552 (a) (4) (B). This Court also has jurisdiction over this action pursuant to 28 USC §1331. Venue lies in this district under 5 USC §552 (a) (4) (B).

Parties

3. Plaintiff Michael Kuzma is an attorney admitted to practice in the State of New York and a resident of the City of Buffalo. Since 2001, he has utilized FOIA to secure records from the DOJ and FBI relating to Leonard Peltier, RESMURS and the American Indian Movement.

4. Defendant DOJ is a Department of the Executive Branch of the United States Government and includes component entity FBI. The DOJ is an agency within the meaning of 5 USC §552 (f).

Facts

5. By letter dated January 19, 2011, Plaintiff requested copies of all records pertaining to Ray Robinson from the FBI. See Exhibit 1.

6. By letter dated February 22, 2011, Mr. David M. Hardy (hereinafter Hardy), Section Chief, Record Information/Dissemination Section, Records Management Division, FBI, acknowledged receipt of Plaintiff's FOIA request and advised him that it had been assigned FOIPA Request No. 1160782-000. See Exhibit 2.

7. By letter dated April 4, 2011, Hardy informed Plaintiff that records which may have been responsive to his FOIA request had been destroyed on February 1, 1993-November 1, 1998. Hardy also advised Plaintiff that records potentially responsive to his

request were unavailable and they had been designated for shipment to the National Archives and Records Administration (hereinafter NARA). See Exhibit 3.

8. By letter dated May 10, 2011, Plaintiff treated Hardy's letter of April 4, 2011 as a denial of his FOIA request and filed an administrative appeal with the Office of Information and Privacy (now known as the Office of Information Policy). See Exhibit 4.

9. By letter dated June 8, 2011, Ms. Priscilla Jones, Supervisory Administrative Specialist, Office of Information Policy (hereinafter OIP), acknowledged receipt of Plaintiff's FOIA appeal and noted it had been assigned appeal number AP-2011-01987. See Exhibit 5.

10. By letter dated September 12, 2011, Ms. Janice Galli McLeod, Associate Director, OIP, informed Plaintiff that records which might have been responsive to his request were destroyed on February 1, 1993; September 1, 1993; April 1, 1997; and November 1, 1998. Other records that might be responsive to Plaintiff's FOIA request were in the process of being transferred to NARA. See Exhibit 6.

11. By letter dated September 20, 2011, Plaintiff submitted a FOIA request to NARA for copies of records pertaining to Ray Robinson. See Exhibit 7.

12. By letter dated December 1, 2011, Ms. Martha Wagner Murphy, Chief, Special Access/FOIA Staff, NARA, informed Plaintiff that FBI case file number 100-HQ-339228 was not responsive to his FOIA request. See Exhibit 8.

13. By letter dated January 27, 2012, addressed to Hardy, Plaintiff requested that the FBI conduct a search of its indexes to locate potentially relevant case files pertaining to Ray Robinson. See Exhibit 9.

14. By letter dated February 7, 2012, Hardy acknowledged receipt of Plaintiff's January 27, 2012 request and informed him that it had been assigned FOIPA Request No. 1160782-001. See Exhibit 10.

15. By letter dated February 29, 2012, Hardy informed Plaintiff that records which may have been responsive to his FOIA request had been destroyed on February 1, 1993 and November 1, 1998. Hardy also advised Plaintiff that potentially responsive records were not in their expected location and could not be located after a reasonable search for these records. See Exhibit 11.

16. By letter dated March 16, 2012, Plaintiff treated Hardy's letter of February 29, 2012 as a denial of his FOIA request and filed an administrative appeal with OIP. See Exhibit 12.

17. By letter dated April 5, 2012, Ms. Priscilla Jones, Supervisory Administrative Specialist, OIP, acknowledged receipt of Plaintiff's FOIA appeal and noted it had been assigned appeal number AP-2012-01770. See Exhibit 13.

18. By letter dated May 1, 2012, addressed to OIP, Plaintiff forwarded information to supplement his administrative appeal dated March 16, 2012. See Exhibit 14.

19. By letter dated September 20, 2012, Mr. Sean R. O'Neill, Senior Attorney, Administrative Appeals Staff, OIP, informed Plaintiff that his FOIA request had been remanded to the FBI for further review and processing of records located subsequent to his appeal. See Exhibit 15.

20. By letter dated October 24, 2012, Hardy acknowledged receipt of Plaintiff's FOIA request and informed him that it had been assigned FOIPA Request No. 1160785-002. See Exhibit 16.

21. By letter dated December 21, 2012, Hardy released two pages in part and an indeterminate number of pages were withheld in their entirety. See Exhibit 17.

22. By letter dated January 23, 2013, Plaintiff appealed the December 21, 2012 determination by the FBI to the OIP. See Exhibit 18.

23. By letter dated February 5, 2013, Ms. Priscilla Jones, Supervisory Administrative Specialist, OIP, acknowledged receipt of Plaintiff's FOIA appeal and noted it had been assigned appeal number AP-2013-01772. See Exhibit 19.

24. Defendant has failed to make a determination on his administrative appeal within the time parameters set forth under 5 USC §552 (a) (6) (A) (i).

25. Plaintiff has a right of prompt access to the requested records under 5 USC §552 (a) (3) (A) and Defendant has wrongfully withheld the sought-after documents from Plaintiff.

26. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.

Requested Relief

Wherefore, Plaintiff prays that this Court:

1. order Defendant to disclose the requested records in their entireties and make copies available to Plaintiff;
2. provide for expeditious proceedings in this action;
3. award Plaintiff his costs and reasonable attorneys fees incurred in this action; and
4. grant such other relief as the Court may deem just and proper.

Dated: June 26, 2013

Respectfully submitted,

s/daire brian irwin
Daire Brian Irwin, Esq.
Counsel for Plaintiff
210 Voorhees Avenue
Buffalo, NY 14214
(716) 837-5631
dbi59@roadrunner.com

Of Counsel:

Barry A. Bachrach, Esq.
Counsel for Plaintiff
62 Paxton Street
Leicester, MA 01524
(508) 892-1533
bbachrach@bachrachlaw.net